

SEXUAL MISCONDUCT POLICY

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SEXUAL MISCONDUCT POLICY

I. POLICY STATEMENT

The College of Idaho is committed to maintaining a working, learning, and campus living environment in which all Members of the College Community (defined below) are treated with dignity and respect. The College strives to create an environment that supports, encourages, and rewards career and educational advancement on the basis of ability and performance.

Accordingly, the College prohibits discrimination on the basis of sex, sexual orientation, gender, gender identity and Pregnancy and Related Conditions (defined below). The College also prohibits Sexual Harassment (defined below), including but not limited to, Sexual Assault (defined below), Stalking (defined below), and relationship violence.

The College will promptly and fairly investigate allegations of sexual misconduct and Retaliation (defined below) in accordance with this policy. The Title IX Coordinator has the authority to investigate and address patterns of conduct or issues identified in campus climate surveys.

All Members of the College Community are responsible for following this policy to create a campus environment free from prohibited sex-based and gender-based discrimination and Sexual Harassment. The College expects all Members of the College Community to avoid any behavior or conduct that could reasonably be interpreted as sex-based or gender-based discrimination or Sexual Harassment.

II. RESPONSIBLE PARTY

The Title IX Coordinator coordinates the College's response to discrimination based on sex and gender in Education programs or activities and allegations of sexual misconduct, including Sexual Harassment and Sexual Assault.

Jodi Nafzger
Title IX Coordinator
Sterry Hall 405
2112 Cleveland Blvd.
Caldwell, Idaho 83605
titleix@collegeofidaho.edu
208-459-5139

III. SCOPE AND AUDIENCE

This policy applies to all sex-based and gender-based conduct that occurs on-campus or off-campus between students, staff, faculty, or other Members of the College Community. Such conduct will follow the procedural steps as outlined below.

- A. Title IX Violations: Upon sexual misconduct allegations that meet the definitions under Title IX of the Education Amendments of 1972 and where a Formal Complaint (defined below) is filed, the College will follow the Formal Grievance Process (defined below) with respect to Title IX as outlined in this policy and in the 2020 Title IX Regulations.¹
- B. Other Sex-Based Conduct: Upon sexual misconduct allegations that do not meet the Title IX definitions or occur outside the jurisdiction of Title IX, the College will investigate such allegations under its own authority and will follow the Formal Grievance Process with respect to sex-based or gender-based conduct that falls outside of Title IX as outlined in this policy.

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

As a recipient of federal financial assistance, the College is required to ensure that none of its education programs and activities discriminate on the basis of sex or gender. Sexual Harassment (defined below) and Sexual Assault (defined below), which is a form of Sexual Harassment, are also prohibited under this policy.

Sexual Harassment allegations concerning an employee that implicate Title VII of the Civil Rights Act of 1964 may be investigated pursuant to the Harassment Prevention Policy or the Sexual Misconduct Policy, at the discretion of the Director of Human Resources or the Title IX Coordinator.

IV. DEFINITIONS

- 1. Advisor – A person who is chosen by a Party or appointed by the College to accompany and advise the Party throughout the Resolution process. During any Live Hearing, each Party must have an Advisor present to ask the questions. If a Party does not have an Advisor during live questioning, the College will appoint one.
- 2. Appeal Decision-Maker – A person who considers a request for appeal from the Hearing Decision-Maker’s findings within the College’s Formal Grievance Process. The College reserves the right to hire external, neutral experts to serve this function when necessary.

¹ Available at: <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>. Note, on April 29, 2024, the Department of Education published its new [Final Rule](#) under Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. The new regulations, which govern colleges/universities’ obligations to address sexual misconduct, were scheduled to become effective and enforceable on August 1, 2024. However, as of August 1, 2024, Idaho is among the 20+ states where courts have issued [preliminary injunctions](#) blocking the new 2024 Title IX rules from going into effect. Therefore, the College will continue to operate under the 2020 regulations until the injunctions are lifted.

3. Coercion – To Force one to act based on fear of harm to one’s self or others. Means of Coercion may include, but are not limited to pressure, threats, emotional intimidation, or the use of physical Force.
4. Complainant – An individual who reports, or is reported to have experienced, conduct prohibited under this policy regardless of whether the individual makes a report or seeks disciplinary action.
5. Confidential Resources – Licensed mental health counselors and staff, campus ministers, or student advocates, acting in their official capacity, who can provide confidential guidance and resources. A report to a Confidential Resource will be used by the College administration to track trends, to plan educational awareness programming, and to address other community safety concerns. But the student's or employee's name will not be disclosed and no official actions will be taken without the student's or employee's permission (as allowed under law).
6. Consent – Voluntary, informed, and freely-given agreement to engage in a course of conduct which may be withdrawn at any time. Consent is demonstrated through words or actions creating clear permission or willingness to engage in mutually agreed-upon sexual activity. Neither silence, the absence of resistance, nor the existence of a prior consensual sexual relationship are sufficient to indicate Consent.

A person who is incapacitated by alcohol or illegal or prescription drugs, unconscious, or asleep cannot give Consent. Agreement to engage in a course of conduct shall not be considered as freely given and shall not constitute Consent when it is obtained through harassment, Coercion, threats, or other forcible conduct.

An individual under sixteen (16) years of age cannot give Consent for sexual activity. Those individuals who are sixteen (16) or seventeen (17) years of age may only Consent to sexual encounters with partners who are less than three (3) years older.

7. Education Programs or Activities – Locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the Sexual Harassment or discrimination occurs and also includes any building owned or controlled by a student organization (e.g., fraternity and sorority) that is officially recognized by the College.
8. Final Determination – A conclusion by a preponderance of the evidence of whether alleged conduct occurred, and if so, whether it constituted a violation under this policy.
9. Finding – A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.

10. Force – The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and Coercion that is intended to overcome resistance or produce Consent.
11. Formal Complaint – A document filed by a Complainant against a Respondent or signed by the Title IX Coordinator alleging discrimination on the basis of sex or gender or Sexual Harassment and requesting that the College conduct an investigation. When filed by a Complainant, the Formal Complaint must have a physical or digital signature. A Formal Complaint must be filed before a formal or Informal Resolution may be sought.
12. Formal Grievance Process – A method of formal resolution designated by the College to address conduct that falls under this policy and which complies with the requirements of 34 CFR Part 106.45.
13. Good Faith – Intention to be open and honest with no deliberate intention to deceive or defraud.
14. Hearing Decision-Maker (and/or Panel) – Those who have decision-making and sanctioning authority within the College’s Formal Grievance Process. The College reserves the right to hire external, neutral experts to serve this function when necessary.
15. Incapacitation – The physiological and/or cognitive inability, temporarily or permanently, to make informed, rational judgments and decisions including giving Consent. States of Incapacitation may include unconsciousness, sleep, and blackouts. An individual is incapacitated if it is demonstrated that the individual was unaware at the time of the incident where they were, how they got there, or why or how they became engaged in a sexual interaction. A determination of Incapacitation does not turn on technical or medical definitions, but instead focuses on whether a Complainant has the ability to make informed, rational judgments and decisions including giving Consent. Common and obvious warning signs which indicate that a person may be Incapacitated or approaching Incapacitation may include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence.

For purposes of this policy, when alcohol is involved, Incapacitation is a state beyond drunkenness or intoxication, and when drug use is involved, Incapacitation is a state beyond being under the influence or impaired by use of the drug. A person is not incapacitated merely because they have been drinking or using drugs. Alcohol and drug use impact each individual differently, and determining whether an individual is incapacitated requires a case-by-case determination.

A Respondent’s intoxication is never an excuse for or a defense to conduct prohibited under this policy, and it does not diminish their responsibility to determine whether Consent was present.

16. Informal Resolution – Process whereby an allegation is resolved informally, without a hearing. Informal Resolution can include, but is not limited to, facilitated dialogue, mediation, negotiated resolutions, and restorative justice. The Title IX Coordinator, or designee, will make the ultimate determination of whether an informal resolution option is available in a given case.
17. Investigator – The person or persons charged to impartially gather facts about an alleged violation under this policy, compile evidence into an investigation report, and create a file of related evidence.
18. Live Hearing – Every institution must provide live hearings for Title IX grievance proceedings. A trained Hearing Decision-Maker must oversee the hearing and determine which questions and evidence are relevant. The parties' Advisors must be allowed to cross-examine witnesses and the other party, with certain restrictions.
19. Members of the College Community – College employees, students, affiliates, affiliate faculty, volunteers, contractors, vendors, customers, visitors, and participants in a College-sponsored program or activity.
20. No-Contact Order – At the request of either Party, the Title IX Coordinator may institute a mutual No-Contact Order preventing either Party from contacting the other while the resolution process is pending, or longer depending on the outcome.
21. Notice – When an employee, student, or third party informs the Title IX Coordinator, Official with Authority, or Responsible Employee of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
22. Official with Authority – An employee of the College explicitly vested with the responsibility to implement corrective measures for Sexual Harassment, discrimination, and/or Retaliation on the basis of sex on behalf of the College.
23. Party/Parties – Refers to a Complainant(s), Respondent(s), or both Complainant and Respondent collectively.
24. Pregnancy and Related Conditions – Pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom (see the Pregnant & Parenting Policy, Appendix K).
25. Remedies – Post-Finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's Education Programs or Activities.
26. Reporter – An individual who reports alleged prohibited conduct but who is not the individual who is alleged to have experienced the prohibited conduct.

27. Respondent – The individual(s) or group alleged to have engaged in conduct prohibited under this policy.
28. Responsible Employee – All employees of the College (other than Confidential Resources), including faculty, staff, and students, have the duty to report sex-based harassment or other types of sexual misconduct to the Title IX Coordinator as soon as practical after learning of the potential violation.
29. Resolution – The result of an Informal Resolution or Formal Grievance Process.
30. Retaliation – This policy prohibits retaliation against a person for: reporting discrimination and harassment; filing a complaint of discrimination or harassment; or participating in the investigation or adjudication of such a complaint. Retaliation includes, but is not limited to, acts or words that constitute intimidation, threats, or coercion intended to pressure any individual to participate, not participate, or provide false or misleading information during any proceeding under this policy. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in print or verbally with intent to harm their reputation.
31. Sanction – A consequence imposed by the College on a Respondent who is found to have violated this policy.
32. Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee of the College conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct. This is commonly referred to as a quid pro quo.
 - b. Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the College's Education Programs or Activities. For a non-inclusive list of examples, see Appendix B.

Where an allegation concerns an employee, it is necessary to analyze Sexual Harassment under Title VII of the Civil Rights Act of 1964 as well, as that legislation prohibits conduct that is so severe, pervasive, or persistent that it creates an environment that (1) would cause a reasonable person substantial emotional distress and undermine the person's ability to work, study, learn, or otherwise participate in College programs or services; and (2) actually does cause the harassed person(s) any of these difficulties.

33. Sexual Assault – Sexual Assault is a form of Sexual Harassment which includes:
 - a. Sex Offenses, Forcible – Any sexual act directed against another person, without

their Consent, including instances in which the Complainant is not able to give Consent.

- i. Forcible Rape – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the Complainant.
- ii. Forcible Sodomy – Oral or anal sexual intercourse with another person, forcibly, and/or against that person’s will (non-consensually), or not forcibly against the person’s will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical Incapacitation.
- iii. Sexual Assault with an Object – The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person’s will (non-consensually).
- iv. Forcible Fondling – The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person’s will (non-consensually), or not forcibly against the person’s will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical Incapacitation.

b. Sex Offenses, Non-Forcible

- i. Incest – Non-forcible sexual intercourse, between two persons who are related to each other, within the degrees wherein marriage is prohibited by Idaho state law.
- ii. Statutory Rape – Non-forcible sexual intercourse with a person who is under the statutory age of Consent in the state of Idaho.
- iii. Dating Violence – Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the available evidence with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- iv. Domestic Violence – Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Idaho, or by

any other person against an adult or youth.

- v. Stalking – Engaging in a course of conduct, on the basis of sex, directed at a specific person, which would cause a reasonable person to fear for the person’s safety, or the safety of others; or suffer substantial emotional distress. For purposes of this definition, course of conduct means two or more acts. For a list of examples of Stalking, see Appendix C.

- 34. Supportive Measures – Non-disciplinary, non-punitive individualized services provided to Complainants or Respondents regardless of whether a Formal Complaint has been filed. These measures are designed to restore or preserve equal access to Education Programs or Activities without unreasonably burdening the other Party. For additional information, see Section XI.
- 35. Working Days – Monday through Friday, excluding weekends, official College holidays, and College closures.
- 36. Witness – An individual who may have information relevant to a report of prohibited conduct.

V. SPECIFIC RESPONSIBILITIES

A. Title IX Coordinator

- 1. The Title IX Coordinator is responsible for overseeing the College’s Title IX compliance efforts, including but not limited to: (1) the intake, investigation, Resolution, and implementation of Supportive Measures to stop, remediate, and prevent discrimination, Sexual Harassment, and Retaliation prohibited under this policy by or against any Member of the College Community, and (2) identifying and addressing patterns or systemic problems that are identified during the review of these complaints.
- 2. The Title IX Coordinator is also responsible for the periodic review and assessment of this policy and any related policies and procedures.
- 3. Where a complaint involves a College employee, the Title IX Coordinator, or their designee, has responsibility for determining whether that complaint should be investigated under this policy, or whether it should be investigated pursuant to another College policy and/or Title VII of the Civil Rights Act.

B. Independence and Conflict of Interest

- 1. The Title IX Coordinator and any person involved in the Formal Grievance Process must act with independence and authority free from bias and any conflicts of interest.

2. To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, including pursuant to Section XX of this policy, contact the Vice President of Institutional Equity & Compliance (lhanekeykeith@collegeofidaho.edu) / (208) 459-5009).
3. Concerns of bias, or a potential conflict of interest, misconduct, or discrimination by any other person involved in the Formal Grievance Process should be raised with the Title IX Coordinator.

VI. RESOURCES FOR COMPLAINANTS

IN AN EMERGENCY, CALL CAMPUS SAFETY (208-459-5151) OR 911		
Preserving evidence for an offense may be helpful when seeking a protection order or prosecuting an offender. Information for victims of Sexual Assault can be found on the FACES of Hope Victim Center website .		
CAMPUS RESOURCES FOR STUDENTS	Campus Safety	(208) 459-5151 (available 24 hours, 7 days per week)
	Title IX Coordinator – Jodi Nafzger	jnafzger@collegeofidaho.edu / (208) 459-5139
	Vice President of Student Affairs – Paul Bennion	pbennion@collegeofidaho.edu / (208) 459-5841
	Director Residence Life – Matt Gier	mgier@collegeofidaho.edu / (208) 459-5846
CONFIDENTIAL RESOURCES FOR STUDENTS	Advocates	(208) 459-5555 (available 24 hours, 7 days per week)
	Counseling Center	(208) 459-5561
	Campus Minister	(208) 459-5282
CAMPUS RESOURCES FOR EMPLOYEES	Campus Safety	(208) 459-5151 (available 24 hours, 7 days per week)
	Title IX Coordinator – Jodi Nafzger	jnafzger@collegeofidaho.edu / (208) 459-5139
	Director of Human Resources – Nancy Johnson-Cassulo	njohnsoncassulo@collegeofidaho.edu / (208) 459-5680
CONFIDENTIAL RESOURCES FOR EMPLOYEES	IBH Employees Assistance Program	(800) 395-1616 (available 24 hours, 7 days per week)
COMMUNITY RESOURCES	Nampa Family Justice Center	(208) 475-5700
	Women’s and Children’s Alliance	(208) 343-7025
	FACES of Hope	(208) 577-4400
	Idaho Coalition Against Sexual and Domestic Violence	(208) 384-0419
	Idaho Council on Domestic Violence and Victim Assistance	(208) 332-1540

VII. COMPLAINT PROCEDURES

A. Authority

1. Title IX mandates the College to investigate alleged violations of this policy when a Formal Complaint has been filed and:
 - i. Complainant is participating or attempting to participate in the Education Programs or Activities of the College;

- ii. The activity in question took place in the United States;
 - iii. The activity in question took place on the campus or on property owned or controlled by the College, at a College-sponsored event, or in buildings owned or controlled by the College's recognized student organizations; and
 - iv. Respondent is a student, member of the faculty, staff, or an administrator for the College.
2. The College will investigate allegations of Sexual Harassment and discrimination that occur outside the jurisdiction of Title IX, under its own authority, including conduct that occurs in-person, outside of the United States, or online, pursuant to the Formal Grievance Process as outlined in this policy.
3. If the Respondent is unknown, or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options; and/or when criminal conduct is alleged, in contacting local law enforcement if the individual chooses to file a police report.

B. Rights of the Parties

The rights of the Parties are detailed in Appendix A of this policy.

C. Reporting Options

Complaints of conduct that may violate this policy should be filed through one of the following:

- Title IX Coordinator at titleix@collegeofidaho.edu / (208) 459-5139
- Campus Safety (208) 459-5151 (available 24 hours, 7 days per week)
- Campus Incident Report: collegeofidaho.edu/incident-report

D. Reports to Law Enforcement

Any individual who believes they have been a victim of a crime is encouraged to report the crime to the appropriate law enforcement agency. Individuals can reach the Caldwell Police Department at (208) 455-3115. Reporting to the College does not start a police investigation.

E. Timing of Reporting

There is no time limitation on providing Notice/Formal Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

Acting on Notice/Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer Supportive Measures and/or

Remedies, and/or engage in informal or formal action, as appropriate. When a Notice/Formal Complaint is affected by a significant time delay, the College will apply the policy in place at the time of the alleged incident(s).

F. Confidentiality

When a Formal Complaint alleging a violation of this policy is investigated, all Parties to the investigation, including Witnesses, will be notified of the College's expectation of confidentiality. The College will only release information obtained in the course of an investigation on a "need to know" basis to the extent permitted under this policy, any applicable law, and consistent with the College's thorough investigation of the Formal Complaint.

Investigation records are maintained in accordance with FERPA, Idaho law, and any other applicable laws or regulations (collectively "privacy laws"). Any public release of information, including a release to comply with the timely warning provisions of the Clery Act, will not include the name of a Complainant or information that could reasonably lead to a Complainant's identification.

G. Alcohol and Drug Amnesty

Because the College seeks to encourage individuals to report potential violations of this policy and fully participate in the investigation of potential violations under this policy, individuals will not, on the basis of evidence they provide in the course of an investigation, be charged with drug or alcohol violations under applicable College policies for offenses that occurred contemporaneously with the incident(s) under investigation.

H. Promptness

The College will act promptly on all allegations once it has received Notice or a Formal Complaint. Estimated timelines are provided in this policy.

I. Protection Against Retaliation

Title IX and the College prohibit Members of the College Community from retaliating against anyone who has in Good Faith filed a Formal Complaint or conducted or cooperated in an investigation of an alleged violation under this policy. The College will take all reasonable steps to prevent Retaliation or to remedy the effects, if it does occur.

Members of the College Community who retaliate against anyone who has participated in an investigation conducted under this policy, including the Investigator, will be subject to appropriate disciplinary action up to and including dismissal from employment for an employee, or Sanctions up to and including expulsion for a student.

Complaints of Retaliation should be promptly reported to the Title IX Coordinator.

The exercise of rights protected under the First Amendment does not constitute Retaliation.

VIII. INVESTIGATIVE & RESOLUTION PROCESS - OVERVIEW

A. Notice and/or Formal Complaint

Upon Notice to the Title IX Coordinator or upon receipt of a Formal Complaint of an alleged violation under this policy, the College will perform an initial assessment to determine the next steps, which may include:

- i. Offering Supportive Measures because the Complainant does not want to proceed formally; and/or
- ii. Seeking an Informal Resolution, where both Complainant and Respondent agree; and/or
- iii. Investigating fully and going through the Formal Grievance Process, including an investigation and a hearing.

The investigation and Formal Grievance Process will determine if this policy was violated. The College will promptly implement effective Remedies for any policy violation.

B. Initial Assessment

Following receipt of Notice or following receipt of a Formal Complaint of an alleged violation of this policy, the Title IX Coordinator, or designee, will perform an initial assessment. The initial assessment will typically take up to five (5) Working Days. An initial assessment can include:

- i. If Notice is given, the Title IX Coordinator will seek to determine if the individual impacted wishes to make a Formal Complaint and will assist them as needed;
- ii. If the person impacted does not wish to make a Formal Complaint, the Title IX Coordinator will determine whether, based on a violence risk assessment, the Title IX Coordinator will initiate a Formal Complaint;
- iii. If a Formal Complaint is received, the Title IX Coordinator will assess the Formal Complaint's sufficiency;
- iv. The Title IX Coordinator will reach out to the Complainant to offer Supportive Measures;
- v. The Title IX Coordinator will work with the Complainant to ensure they are aware of their right to have an Advisor; and/or
- vi. The Title IX Coordinator will work with the Complainant to determine if the Complainant wishes to pursue a supportive and remedial response, an Informal Resolution option, or the Formal Grievance Process.

C. Supportive and Remedial Response

If a supportive and remedial response is preferred, the Title IX Coordinator will work with the

Complainant to gain an understanding of what outcome they are seeking and will then work to facilitate implementation of their desired outcome, as appropriate. While no Formal Grievance Process is initiated when a supportive and remedial response is preferred, the Complainant can elect to initiate one later, if desired.

D. Informal Resolution

If an Informal Resolution option is preferred, the Title IX Coordinator will assess whether the Formal Complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best, and may seek to determine if the Respondent is also willing to engage in Informal Resolution. A Formal Complaint must be filed before Informal Resolution may be pursued. A Respondent always has the right to decline any Informal Resolution and request a Formal Grievance Process. For additional detail regarding the Informal Resolution process, see Section XII.

E. Formal Grievance Process

If a Formal Grievance Process is preferred, the Title IX Coordinator will determine if the alleged misconduct falls under the scope of Title IX and/or this policy. If the alleged misconduct falls under the scope of Title IX and/or this policy, the Title IX Coordinator will initiate the formal investigation and Formal Grievance Process by sending a notice of investigation simultaneously to both parties, as described in more detail in Sections IX-XVI and XVIII-XX.

If the alleged misconduct does not fall under the scope of Title IX, and the Title IX Coordinator determines that Title IX does not apply, the Formal Complaint under Title IX will be “dismissed.” If additional allegations are raised after a Formal Complaint is dismissed or closed which require investigation, a new notice of investigation will be provided simultaneously to the Parties. A dismissal under Title IX does not limit the College’s authority to address the Formal Complaint under this policy or any other applicable College policy. As such, if the alleged misconduct falls under the scope of this policy, the matter will proceed pursuant to the conduct process articulated in Section XVII below. Additionally, the Title IX Coordinator will assess if any other policies may apply to the allegations and will refer the matter accordingly. Notice will be provided to the Parties simultaneously in the event The College will proceed pursuant to any other policies.

F. Emergency Removal or Administrative Leave

The College may remove a Respondent entirely or partially from its Education Programs or Activities on an emergency basis. Removal may only occur when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any individual justifies removal.

The emergency situation must arise from the alleged conduct that could constitute Sexual Harassment or sexual misconduct under this policy. The College will implement the least

restrictive emergency actions possible in light of the circumstances and safety concerns. This also applies to any restrictions that a coach or athletic administrator may place on a student athlete arising from allegations related to Title IX. A non-student employee Respondent may be placed on administrative leave with pay pending the Resolution of the Formal Grievance Process.

In all cases in which an emergency removal is imposed, the Respondent will be given written notice of the action and the option to request to meet with the Title IX Coordinator as soon as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. Any objections to the emergency removal must be raised within three (3) Working Days of receiving the notice or it will be deemed waived. Subsequent to the show cause meeting with the Title IX Coordinator, there is no appeal process for emergency removal decisions pending the outcome of the Formal Grievance Process.

G. Witnesses

If a formal investigation is initiated and/or if a matter proceeds to a hearing, Witnesses (as distinguished from the Parties), who are employees of the College, are expected to cooperate with and participate in the College's investigation and Resolution process. Failure of such Witnesses to cooperate with and/or participate in the investigation or Resolution process may warrant discipline or corrective action. Though not preferred, Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s).

H. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution process – including the Title IX Coordinator, Investigator(s), and Decision-Maker(s) – must be free from conflicts of interest and biases.

The Parties may, at any time during the Resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern has merit. If so, the individual with the conflict or bias will be removed from the process.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of evidence under the Formal Grievance Process.

I. Resolution Team

The College relies on College employees to carry out the Resolution process. The College reserves the right to hire external consultants to carry out the Formal Grievance Process. All Resolution team members are trained annually (*see* Appendix F) and can serve in any of the following roles at the discretion of the Title IX Coordinator.

1. Investigator
2. Facilitator in Informal Resolution
3. Conduct Officer
4. Hearing Facilitator
5. Hearing Decision-Maker
6. Appeal Decision-Maker
7. Advisors

J. Resolution Timeline

The College will make a Good Faith effort to complete the Resolution process within 60-90 Working Days, which can be extended as necessary for appropriate cause by the Title IX Coordinator. Additional time will be necessary to administer the appeal process. The Title IX Coordinator will provide Notice and rationale for any extensions or delays to the Parties as appropriate, as well as an estimate of how much additional time will be needed to complete the Formal Grievance Process.

The College may undertake a short delay in its investigation if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or Witnesses, and/or accommodations for disabilities or health conditions (*see Appendix J*).

The College will communicate, in writing, the reason for and anticipated duration of the delay to the Parties and provide the Parties with status updates, if necessary. The College will promptly resume its investigation and Resolution process as soon as feasible.

IX. NOTICE OF INVESTIGATION

Upon the filing of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the nature of the allegations by issuing a notice of investigation via email upon commencement of the Formal Grievance Process. A copy of the notice of the investigation will also be simultaneously sent via email to the Complainant. The notice of investigation will include the allegations of discrimination and/or Sexual Harassment including, if known at the time of the notice:

1. A summary of the allegations of conduct prohibited under this policy including the date, location, and a description of the conduct alleged to violate this policy;
2. The name of the Reporter and/or the Complainant;
3. A clear statement on whether a mutual No-Contact Order is being implemented at that time;
4. The prohibition on Retaliation for individuals who report in Good Faith or who cooperate during an investigation;
5. Information regarding the investigation and grievance process, including timelines;

6. Information regarding investigation timelines;
7. Notice of the Respondent's rights under this policy, including the right to an Advisor of the Respondent's choice at all stages of the Formal Grievance Process;
8. Notice that Respondent is presumed not responsible, and that the determination of responsibility will be reached at the end of the Formal Grievance Process;
9. That the College Student Code of Conduct and this policy prohibit knowingly making false statements, or knowingly submitting false information during the Formal Grievance Process;
10. The right to inspect and review evidence gathered in the course of the investigation;
11. Information regarding Supportive Measures;
12. Information about potential Sanctions and/or responsive actions that could result;
13. Information about the privacy of the Formal Grievance Process;
14. Information on how a Party may request disability-related accommodations during the Formal Grievance Process (*see Appendix J*);
15. The name of the Investigator;
16. Information on how to report any suspected conflicts of interest that the Investigator(s) may have; and
17. Instructions to preserve any evidence that is related to the allegations.

As noted, the notice of investigation will be made in writing and sent via email simultaneously to the Respondent and the Complainant to help ensure an efficient investigation. The notice of investigation will be considered received on the date that it is sent via email.

Respondent has five (5) Working Days from receipt of the notice of investigation to contact the Title IX Coordinator to schedule a meeting to discuss the allegations set forth in the notice. Both parties will be provided a reasonable amount of time before being interviewed to secure an Advisor and prepare for the interview.

If a student Respondent does not respond within seven (7) Working Days of receiving the notice, the Investigator may proceed with the investigation without input from the Respondent. If an employee Respondent does not respond within seven (7) Working Days of receiving the notice, the College may initiate disciplinary action.

If, in the course of an investigation, it is determined that there are additional allegations that should be investigated which were not included in the initial notice of investigation, the College will provide an amended notice of investigation in writing to both Parties.

X. ADVISORS OF CHOICE

Both Complainant and Respondent have the right to be accompanied by an Advisor of their choice when attending any meeting, interview, or proceeding that takes place pursuant to this policy. Choosing an Advisor who is also a Witness or other Party involved in the investigation or adjudication process is allowed, but creates the potential for bias and conflicts of interests.

During the investigation, an Advisor may take notes and quietly confer with the Party being advised, but may not speak on behalf of the Party or in any way disrupt any meeting or proceeding. Each Advisor is required to adhere to these requirements or they will be asked to leave the meeting or proceeding. A Party who chooses an Advisor who is also a Witness can anticipate that issues of potential bias will be explored by the Hearing Decision-Maker(s).

Complainant or Respondent may choose to retain an attorney or other paid professional to act as an Advisor. However, each Party will be solely responsible for paying any fees charged by the Advisor. All Advisors are required to adhere to the requirements above regardless of their professional qualifications.

The Title IX Coordinator will appoint an Advisor for any Party that does not have an Advisor at the hearing stage. All Advisors appointed by the Title IX Coordinator will be trained by the College regarding the Formal Grievance Process.

During the hearing, if a Party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the College may require the Party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

XI. SUPPORTIVE MEASURES

Both Complainant and Respondent will promptly be offered appropriate and reasonable Supportive Measures upon Notice of the alleged discrimination, Sexual Harassment, and/or Retaliation, including confidential counseling for students and/or employees. The Title IX Coordinator will assist both Parties to ensure they have access to all available resources. These Supportive Measures are non-disciplinary, non-punitive, individualized services offered without charge to the Parties to restore or preserve access to the College's Education Programs or Activities.

These measures include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, mutual No- Contact Orders between Parties, change in work, parking, or housing locations, leaves of absence, increased security and monitoring in certain areas of campus, and other similar measures, and if necessary, emergency removal (see Section VIII(F)). For additional examples of Supportive Measures, see Appendix D.

The College will maintain a Party's privacy while providing Supportive Measures, provided it does not impair the College's ability to provide the measures. The College will act to ensure that Supportive Measures have the least academic impact possible and do not unreasonably burden either Party.

If a Supportive Measure in a matter includes a mutual No-Contact Order between the Parties, which may be applied when the notice of investigation is issued, or at any time thereafter during

the course of the investigation, a Party should report any violation of the No-Contact Order immediately to the Investigator to determine whether it will result in an additional charge of Retaliation under this policy. In that event, the Retaliation charge may, at the discretion of the Title IX Coordinator, be added to an ongoing investigation, or it may result in a new complaint under this policy being initiated. The violation of a No-Contact Order may be considered when determining Sanctions or disciplinary action.

XII. INFORMAL RESOLUTION

Informal Resolution is a process whereby an allegation is resolved informally, without a hearing. Informal Resolution can include, but is not limited to, facilitated dialogue, mediation, negotiated resolutions, and restorative justice. The Title IX Coordinator, or designee, will make the ultimate determination of whether an informal resolution option is available in a given case.

The College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of discrimination or Sexual Harassment consistent with this section. Similarly, the College may not require the parties to participate in an Informal Resolution process and may not offer an Informal Resolution process unless a Formal Complaint is filed. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication.

If both Parties and the College wish to resolve the matter through an Informal Resolution, after the Formal Complaint is filed, the Title IX Coordinator, or designee, will provide written notice to the parties, including:

1. the allegations;
2. the requirements of the Informal Resolution process, including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the Formal Grievance Process with respect to the Formal Complaint; and
3. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The College will obtain the parties' voluntary, written consent to the informal resolution process.

If an Informal Resolution is reached, it will become binding once both Parties have voluntarily signed the agreement. The Title IX Coordinator maintains records of any Resolution that is reached. Failure to abide by the Resolution agreement freely entered into may result in appropriate responsive, disciplinary, or corrective actions.

Results of Informal Resolutions are not appealable after both Parties have signed the Resolution.

XIII. RESPONDENT ACCEPTS RESPONSIBILITY FOR ALLEGED VIOLATIONS

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the Formal Grievance Process will be paused.

If an Informal Resolution is appropriate, the Title IX Coordinator will determine whether all Parties and the College are able to agree on responsibility, Sanctions, and/or Remedies. If so, the Title IX Coordinator will implement the accepted Finding that the Respondent is in violation of College policy and will implement agreed-upon Sanctions and/or Remedies in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of Resolution. When the Parties cannot agree on all terms of Resolution, the Formal Grievance Process will resume at the same point where it was paused.

XIV. FORMAL GRIEVANCE PROCESS - INVESTIGATION

After both Parties have received copies of the notice of investigation as articulated in Section IX, the Title IX Coordinator, or designee, will appoint at least one Investigator. The Investigator(s) will then set up interviews with both the Complainant and Respondent after providing both Parties with enough time to prepare for the investigation process. The College will make a Good Faith effort to complete investigations in a timely fashion and will communicate with the Parties to update them on the progress and timing of the investigation.

The Investigator(s) serves in a non-advocacy role as a neutral finder of fact. In the course of the investigation, each Party will have the opportunity to provide information, including Witnesses and evidence (e.g., text messages, emails, written documents, photographs, social media posts), relevant to the allegations set forth in the notice of investigation. The Investigator(s) may need to meet with Complainant and Respondent more than once for each Party to have an adequate opportunity to respond to new information obtained in the course of the investigation. The Investigator(s) must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege (such as physician-patient or attorney-client), unless the person holding such privilege has waived it.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they demonstrate a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

The Investigator(s) will prepare an investigation summary, which will include relevant

information from each interview and other evidence gathered in the course of the investigation. Information regarding the Parties' medical, physical, or mental health that are not relevant to the complaint will not be included in the investigation summary.

Investigator(s) will record and create a transcript of interviews with Parties and Witnesses to ensure accuracy. Investigator(s) will provide a summary of the interviews as part of the investigation summary. Parties and Witnesses are not permitted to make their own audio or video recordings of interviews.

Both Complainant and Respondent will be sent simultaneously via email a written copy of the investigation summary, which will be considered received on the date that it is sent. The Parties will also be provided with a file of any directly-related evidence that was not included in the summary. Each Party will be given ten (10) Working Days to inspect and review the summary and evidence and submit a written response to the Investigator. If, during inspection or review, any material adjustments are raised as to the allegations (e.g., additional incidents or allegations, additional Complainants, etc.) or new policy violations are implicated, the investigators will refer the matter back to the Title IX Coordinator to determine whether such changes require an updated notice of investigation, and the Parties will be notified simultaneously. In the event that new allegations or policy violations will be considered, an updated notice of investigation will be provided simultaneously to the Parties.

After receiving the response from both Parties, the Investigator(s), at their discretion, may elect to respond in writing to the Parties' responses and/or to share the responses between the Parties for additional responses. The Investigator(s) will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.

The final report is then shared with all Parties and their Advisors via email at least ten (10) Working Days prior to the hearing.

Any effort by either Party to distribute, reproduce, alter, post, or circulate the investigative summary may result in a policy violation and Sanctions pursuant to the processes outlined in this policy.

XV. MANDATORY DISMISSAL OF FORMAL COMPLAINT UNDER TITLE IX

Upon completion of the investigation, if the Title IX Coordinator determines that the allegations, if true, would not constitute a Title IX policy violation, or otherwise are outside of the authority of Title IX, the College must dismiss the Formal Complaint for purposes of Title IX.

If the allegations must be dismissed under Title IX, the College will simultaneously issue both Parties an amended notice of investigation in writing that explains that the College is dismissing the allegation under Title IX, and will indicate whether it is pursuing the conduct process as articulated in Section XVII below based on a violation of this policy or whether it is referring this

matter for review under any other College policy.

Where an employee is involved, the Title IX Coordinator will consider whether the allegations would constitute a violation of another College policy and will direct that the allegations be investigated pursuant to that policy.

XVI. PERMISSIVE DISMISSAL OF FORMAL COMPLAINT UNDER TITLE IX

The College may dismiss a Formal Complaint, or any allegations therein if:

1. At any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein;
2. The Respondent is no longer enrolled at, or employed by, the College; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint and the allegations therein.

If a Formal Complaint, or any allegations therein are dismissed, the College will promptly send written notice of the dismissal to all Parties simultaneously. This dismissal decision is appealable by any Party under the procedures for appeal.

XVII. OTHER SEX-BASED CONDUCT – CONDUCT PROCESS

If after initial assessment by the Title IX Coordinator followed by an investigation, or after completion of an investigation and a mandatory dismissal pursuant to Title IX, a violation of this policy is still indicated, the Title IX coordinator may refer the matter to a hearing according to the following conduct process:

1. Notice of Hearing – A Notice of Hearing letter is sent to the individuals involved requesting they appear before a conduct officer. If Respondent fails to appear, a hearing takes place without the Respondent in accordance with campus policy regarding Failure to Appear and Finding Without Response (below).
2. Hearing – During the hearing, the Complainant and the Respondent will have an opportunity to make a statement.
3. Conclusion – In cases where a hearing has taken place, the conduct officer makes a decision based upon preponderance of evidence (more likely than not) and a Notice of Findings letter is sent, indicating Sanctions, if any.
4. Failure to Appear and Conclusion Without Response – Respondents are required to appear for conduct proceedings when requested to do so by an Investigator or conduct officer. The failure of any Respondent to appear for a conduct proceeding could be grounds for disciplinary action. If a Respondent fails to appear for a conduct proceeding, the conduct officer may move forward with reviewing the available evidence and make a determination.

5. Interim Action Pending Investigation – The Vice President of Student Affairs (or designee) has the discretion to temporarily suspend a student from the College and/or from the residence halls or reassign a resident to another facility and restrict the student from specific facilities pending an investigation and conclusion whenever in the Dean's judgment the continued presence of a student constitutes a danger to the student or the safety of persons or property, or the seriousness of the allegations warrants such action. The Director of Human Resources (or designee) has the discretion to temporarily suspend or reassign an employee pending the outcome of these proceedings whenever in the Director's judgment the continued presence of the employee constitutes a danger to persons or property, or the seriousness of the allegations warrants such action.
6. Sanctions – Sanctions depend upon the severity of the misconduct, previous conduct violations, the attitude of the individual(s) involved, and the impact upon the College and greater community. (For more information, see Section XIX Sanctions below.)
7. Appeal – Both complainant and respondent have the right to appeal the hearing officers' decision. (For more information, see Section XX Appeals below.)

XVIII. TITLE IX – LIVE HEARING

If following a Title IX investigation, the Title IX Coordinator determines that the matter must proceed to a Live Hearing, and if the matter is not or cannot be resolved via Informal Resolution, the matter will move to a Live Hearing.

A. Timing

The Live Hearing will take place at least ten (10) Working Days after the final investigation report is transmitted to the Parties and the Hearing Decision-Maker unless all Parties and the Hearing Decision-Maker agree to an expedited timeline.

B. Hearing Decision-Maker

The College will designate Hearing Decision-Maker(s) to chair the hearing. The College may choose to use a three (3)-member panel or a single Hearing Decision-Maker for the hearing, at the discretion of the Title IX Coordinator. When a panel is used, one of the three (3) members will be appointed to chair the hearing and act as the Hearing Decision-Maker by the Title IX Coordinator. The Hearing Decision-Maker will rule on the relevance of questions raised during the Live Hearing by the Parties. The Hearing Decision-Maker(s) must not have had any previous involvement with the investigation.

The Title IX Coordinator may not serve as a Hearing Decision-Maker in the matter, but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Hearing Decision-Maker.

C. Evidence

Any evidence that the Hearing Decision-Maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless the incident(s) demonstrate a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

All evidence considered at the hearing must be included in the investigation report or the file of directly related evidence. Typically, the Hearing Decision-Maker will not permit evidence to be admitted at the hearing that was not shared during the investigation. Questions about this should be directed to the Hearing Decision-Maker. If new evidence or witnesses are raised during the hearing, the Hearing Decision-Maker has discretion to disallow the evidence or send the case back to the investigators.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate Sanction upon a determination of responsibility. This information is only considered at the Sanction stage of the process.

D. Standard

Live Hearings shall utilize the preponderance of the evidence standard for determining whether a policy has been violated. For additional procedures and protocols for the Live Hearing, see Appendix H.

E. Notice of Outcome

The Title IX Coordinator will work with the Hearing Decision-Maker to prepare a notice of outcome. Upon receipt of the final notice of outcome, the Title IX Coordinator will then share it simultaneously via email within five (5) Working Days of receipt with the Parties and their Advisors. Once emailed to the Parties' College-issued email or otherwise approved account, notice of the outcome will be presumptively delivered.

The notice of outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section(s), and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to obtain evidence, and hearings held.

The notice of outcome will specify the Finding on each alleged policy violation; the Findings of fact that support the determination; conclusions regarding the application of the relevant policy

to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any Sanctions issued which the College is permitted to share according to state or federal law; and any Remedies provided to the Complainant designed to ensure access to the College's Education Programs or Activities, to the extent the College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The notice of outcome will also include information on appeal rights and associated timelines.

If an appeal is not filed by the deadline, the results of the Formal Grievance Process are considered final.

XIX. SANCTIONS

Factors considered when determining a Sanction/responsive action may include, but are not limited to:

1. The nature, severity of, and circumstances surrounding the violation(s);
2. The Respondent's disciplinary history;
3. Previous allegations or allegations involving similar conduct;
4. The need for Sanctions/responsive actions to bring an end to Sexual Harassment and/or Retaliation;
5. The need for Sanctions/responsive actions to prevent the future recurrence of Sexual Harassment and/or Retaliation;
6. The need to remedy the effects of the Sexual Harassment and/or Retaliation on the Complainant and the community;
7. The impact on the Parties; and
8. Any other information deemed relevant by the decision-maker(s)

Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal, or upon the expiration of the appeal request window. The Sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or Sanctions imposed by external authorities. For a list of possible student and employee Sanctions, see Appendix G.

XX. APPEALS

Any Party may file a request for appeal. The request must be submitted in writing to the Title IX Coordinator within five (5) Working Days of the delivery of the notice of outcome.

There will be a single Appeal Decision-Maker. The Appeal Decision-Maker will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The request for appeal will be forwarded to the Appeal Decision-Maker for consideration to determine if the request meets the grounds for appeal (a review for standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the requirements for an appeal to be considered, including timeliness.

A. Grounds for Appeal

Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. New evidence that was not reasonably available at the time the determination of responsibility or dismissal was made that could affect the outcome of the matter; and
- iii. The Title IX Coordinator, Investigator(s), or Hearing Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the request for appeal do not meet the grounds in this section, the request will be denied by the Appeal Decision-Maker and the Parties and their Advisors will be notified simultaneously in writing of the denial and the rationale.

If any of the grounds in the request for appeal meet the grounds in this section, then the Appeal Decision-Maker will notify simultaneously via email, attaching a copy of the request for appeal, the Party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s), and/or the original Hearing Decision-Maker(s).

The Appeal Decision-Maker will determine whether an appeal meets the grounds of this section within five (5) Working Days after the receipt of the appeal.

The non-appealing Party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s), and/or the original Hearing Decision-Maker(s) will then be given five (5) Working Days to submit a response to the approved portion of the appeal. The Appeal Decision-Maker will ensure all Parties and their Advisors receive a copy of any response to the appeal submitted by the non-appealing party(ies).

The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time, which will be reviewed for standing by the Appeal Decision-Maker and either denied or approved. If approved, it will be forwarded to the Party who initially requested an appeal, the Investigator(s), and/or the original Hearing Decision-Maker(s) who will submit their responses within five (5) Working Days. The Appeal Decision-Maker will ensure all Parties and their Advisors receive a copy of any response to the appeal submitted by the non-appealing party(ies).

Neither Party may submit any new requests for appeal after this time period. The Appeal Decision-Maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. The Appeal Decision-Maker will render a decision within no more than ten (10) Working Days after receiving all appeal materials, barring

exigent circumstances. All decisions apply the preponderance of the evidence standard.

The notice of appeal outcome will be sent to all Parties simultaneously via email, including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the Finding on each ground for appeal, any specific instructions for remand or reconsideration, and the rationale supporting the essential Findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and emailed to the Parties' College-issued email addresses or otherwise approved accounts. Once emailed, the notice of appeal outcome will be presumptively delivered.

B. Appeal Considerations

Appeal Decision-Makers should show deference to the judgment of the Hearing Decision-Makers, making changes to the Finding only when there is clear error and to the Sanction(s)/responsive action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full, complete (de novo) re-hearing of the allegation(s). In most cases, appeals shall be limited to a review of the decision, any written material considered in the decision, the recording of the live hearing (if one was held), any written materials submitted with the appeal, and any response to the appeal submitted by the non-appealing party(ies). Where an appeal is based on new evidence, the new evidence may be considered only to determine whether the information was reasonably available at the time of the decision and whether the new evidence could affect the outcome of the matter.

The Appeal Decision-Makers may consult with the Title IX Coordinator on questions of procedure, rationale, or clarification, if needed; and/or the Vice President of Institutional Equity & Compliance, if the appeal concerns bias or conflict of interest by the Title IX Coordinator as articulated in Section XX(A)(iii) of this policy.

Once an appeal is decided, the outcome is final and any further appeals of that decision are not permitted. The Hearing Decision-Maker's Finding, after reconsideration (remand) due to an appeal, is not subject to an appeal.

In rare cases where a procedural or substantive error cannot be cured by the original Hearing Decision-Maker(s) (as in cases of bias), the Appeal Decision-Maker may order a new hearing with a new Hearing Decision-Maker(s). The results of a new hearing can be appealed once for any of the three available appeal grounds.

For cases in which the appeal results in Respondent's reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some lost opportunities may be irreparable in the short term.

XXI. RECORDKEEPING

The following will be maintained by the College for a period of at least seven (7) years and/or in accordance with state or federal law:

1. Each investigative summary including any determination of responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary Sanctions imposed on the Respondent;
3. Any Remedies provided to the Complainant designed to restore or preserve equal access to the College's Education Programs or Activities;
4. Any appeal and its result;
5. Any Informal Resolution and its result;
6. Any materials used to train the Title IX Coordinator, Investigators, decision-makers, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on the College's website; and
7. Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of discrimination and/or Sexual Harassment, including: the basis for all conclusions that the response was not deliberately indifferent; and any measures designed to restore or preserve equal access to the College's Education Programs or Activities

XXII. COMPLAINANT OR RESPONDENT RIGHT TO FILE COMPLAINT

If a student Complainant or Respondent believes the College has failed to investigate the alleged policy violation in accordance with law or policy, a complaint may be filed with:

Office for Civil Rights
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
(206) 607-1600
<https://www.ed.gov/ocr>

An employee Complainant or Respondent may file a complaint with either of the following:

Idaho Human Rights Commission
317 West Main Street Boise, ID 83702
(208) 334-2873
Toll Free: (888) 249-7025
<https://humanrights.idaho.gov>

Equal Employment Opportunity Commission
1-800-669-4000
www.eeoc.gov

XXIII. TRAINING AND EDUCATIONAL PROGRAMMING AND NOTIFICATION OF SERVICES

The College will provide primary prevention and awareness programming to all incoming students and new employees and will provide ongoing prevention and awareness campaigns throughout the year. Programming will, at a minimum, include the following:

- i. Information on all aspects of this policy and its application at the College;
- ii. A statement of the College's prohibition of domestic violence, dating violence, Sexual Assault and stalking, Consent, and definitions of each, as they are defined under Idaho law and in College policy;
- iii. Bystander intervention training covering safe and positive options for intervention that may be carried out by a bystander to prevent harm when there is a risk of domestic violence, dating violence, Sexual Assault, or Stalking occurring. Programs will also offer information on risk reduction including how to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- iv. Information for victims of sex offenses, domestic violence, dating violence, and/or stalking, including services and assistance available to victims, how to report an offense, the importance of preserving evidence, and the rights of victims.

**ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A
LIMITED LICENSE TO THE COLLEGE OF IDAHO
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APPENDICES

Appendix A: Statement of the Rights of the Parties

The Parties each have the right to:

1. Be treated with respect and dignity.
2. An equitable investigation and resolution of all credible allegations of prohibited sex-based or gender-based discrimination and/or Sexual Harassment made in Good Faith to College officials.
3. Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
4. Timely, written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
5. Be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
6. Not to have any personally identifiable information released to the public without their consent, except to the extent permitted by law.
7. Have the College policies and procedures followed without material deviation.
8. Be free from pressure to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. To report sex-based or gender-based discrimination and/or Sexual Harassment to both on-campus and off-campus authorities.
10. Be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by College authorities in notifying such authorities, if the Party so chooses. This includes the right not to be pressured to report.
11. Have allegations of violations of this policy responded to promptly.
12. Be informed of available interim actions and Supportive Measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on-campus and in the community.
13. To request a mutual No-Contact Order when a person has engaged in or threatens to engage in Stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the Party or others.
14. Be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, Sexual Harassment, and/or Retaliation, if such changes are reasonably available. No Formal Complaint or investigation needs to occur before this option is available.
15. Have the College maintain such actions for as long as necessary and for Supportive Measures to remain private so long as this does not impair the College's ability to provide the Supportive Measures.

16. Ask the Investigator(s) and Hearing Decision-Maker(s) to identify and question relevant Witnesses.
17. Provide the Investigator(s)/Hearing Decision-Maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Hearing Decision-Maker, may be asked of any Party or Witness.
18. Access relevant and directly-related evidence obtained and to respond to that evidence.
19. Provide the Investigator(s) with their account of the alleged misconduct and have that account be conveyed to the Hearing Decision-Maker(s).
20. Receive a copy of the investigation report, including all facts, policy, and all relevant and directly-related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) Working Days to review the report prior to the hearing.
21. Respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
22. Be informed of the names of all Witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant.
23. Receive regular updates on the status of the investigation and/or resolution.
24. Have reports of alleged policy violations addressed by Investigator(s), the Title IX Coordinator, and Hearing Decision-Maker(s) who have received relevant annual training.
25. Preservation of privacy, to the extent possible and permitted by law.
26. Have meetings, interviews, and/or hearings that are closed to the public.
27. Ability to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
28. Have an Advisor of their choice to accompany and assist the Party in all meetings and/or interviews associated with the resolution process.
29. Have the College compel the participation of faculty and staff Witnesses in the investigation.
30. Be present, including via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
31. Have an impact statement be considered by the Hearing Decision-Maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
32. Be promptly informed in a written notice of outcome letter of the Finding(s) and Sanction(s) of the resolution process and a detailed rationale (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the Parties.
33. Be informed in writing when a decision by the College is considered final and any changes to the Sanction(s) that occur before the decision is finalized.
34. Be informed of the opportunity to appeal the Finding(s) and Sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.
35. Have a fundamentally fair resolution as defined in this policy and its procedures.

Appendix B: Examples of Unwelcome Conduct

Unwelcome conduct may include but is not limited to:

1. Attempting to coerce an unwilling person into a sexual relationship;
2. Repeatedly subjecting a person to unwelcome sexual attention, unwanted comments, or communications or jokes of a sexual nature or about their sexual experiences or orientation;
3. Punishing a refusal to comply with a sexual request;
4. Conditioning a benefit on submitting to sexual advances;
5. Threatening sexual violence;
6. Bullying someone on the basis of sex or gender. This includes bullying someone for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity. This may include repeated use of degrading words, gestures, or sounds to describe a person;
7. Sexual Assault as detailed in Section IV(33) of this policy; or
8. Sexual exploitation on the basis of sex and/or gender, examples of which include, but are not limited to:
 - a. Invasion of sexual privacy;
 - b. Prostituting a member of the College community;
 - c. Nonconsensual recording of a sexual activity, in any form or format;
 - d. Duplication, distribution, or publication of a consensually made recording of a sexual activity without the consent of all Parties involved in the recorded sexual act;
 - e. Going beyond the boundaries of Consent, including letting someone else watch a consensual sex act while hiding or without the other person's knowledge;
 - f. Knowingly viewing, photographing, or filming another person without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where there is a reasonable expectation of privacy;
 - g. Knowingly transmitting a sexually transmitted infection to a Member of the College Community; or
 - h. Exposing one's genitals or inducing another to expose their genitals in nonconsensual circumstances.

Appendix C: Examples of Stalking

Stalking behaviors may include, but are not limited to:

1. Nonconsensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of images or information on websites, written letters or notes, gifts, or any other communications that are undesired and/or place another person in fear;
2. Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other location(s) frequented by the person being targeted;
3. Surveillance and other types of observation, whether by physical proximity or electronic means;
4. Trespassing;
5. Vandalism;
6. Nonconsensual touching;
7. Direct physical and/or verbal threats against a person being targeted or that person's friends, family members, or animals;
8. Gathering of information about a person from that person's family, friends, co-workers, or classmates;
9. Manipulating and controlling behaviors such as threats to harm oneself or threats to harm someone close to the target of the behaviors; or
10. Defamation or slander of the person being targeted.

Appendix D: Supportive Measures

Supportive Measures may include, but are not limited to:

1. Referral to counseling, medical, and/or other healthcare services;
2. Referral to the Employee Assistance Program;
3. Referral to community-based service providers;
4. Visa and immigration assistance;
5. Student financial aid counseling;
6. Education to the community or community subgroup(s);
7. Altering campus housing assignment(s);
8. Altering work arrangements for employees or student employees;
9. Safety planning;
10. Providing campus safety escorts;
11. Providing transportation accommodations;
12. Implementing contact limitations (No-Contact Orders) between the Parties;
13. Academic support, extensions of deadlines, or other course/program-related adjustments;
14. Timely warnings;
15. Class schedule modifications, withdrawals, or leaves of absence;
16. Increased security and monitoring of certain campus areas; and/or
17. Any other actions deemed appropriate by the Title IX Coordinator.

Appendix E: Supportive Services

West Valley Medical Center

1717 Arlington Ave, Caldwell, ID 83605

208-459-4641

Emergency medical care

Nampa Family Justice Center

1305 3rd St S, Nampa, ID 83651

208-475-5700

Crisis Intervention, Case Management, Civil Protection Order Assistance, Safety Planning, Onsite Trauma-Informed Counseling, Offsite Trauma-Informed Counseling, Weekly Support Groups and Classes

Idaho Legal Aid Hotline

(208) 746-7541

(low-income resource)

Family Law, Agricultural and Migrant Farmworkers, Domestic Violence, Native American, Housing

Idaho 24-hour Domestic Violence Hotline

800-669-3176

National 24-hour Domestic Violence Hotline

800-799-7233

Advocates Against Family Violence (Caldwell)

(208) 459- 4779 (24-hr hotline)

Emergency Services, Victim and Family Counseling, Safety Planning, Applying for Legal Aid, Civil Protection Order, Custody/Divorce, Victim Impact Statement, Crime Victims Compensation, Legal Proceedings

Hope's Door Shelter

(208) 459- 6279

Emergency Housing

Idaho Coalition Against Sexual & Domestic Violence

208-384-0419

www.idvsa.org

Domestic Violence, Sexual Assault, Stalking, Legal Aid, Workshops, Capacity Building Training

Women's and Children's Alliance

24-Hour Domestic Abuse Hotline: 208.343.7025

24-Hour Sexual Assault Hotline: 208.345.7273 (RAPE)

Safe Shelter, Court Advocacy, Case Management, Rape Crisis Advocacy, Therapy & Support Groups, Financial Empowerment

Sane Solutions - Terry Reilly

(208) 467-4431

Casa de Esperanza

24-hr bilingual domestic violence helpline: 651-772-1611

RAINN - Rape, Abuse and Incest National Network

hotline (1.800.656.HOPE)

<https://hotline.rainn.org/online>

Appendix F: Resolution Team Training

Resolution team members involved in the investigation and resolution process receive annual training. This training includes, but is not limited to:

- a. The scope of the College's Sexual Misconduct Policy;
- b. How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;
- c. Implicit bias, disparate treatment and impact;
- d. Reporting, confidentiality, and privacy requirements;
- e. Applicable laws, regulations, and federal regulatory guidance;
- f. Impartiality and objectivity;
- g. How to generate clear, concise, evidence-based rationales;
- h. The definitions of all offenses;
- i. How to apply definitions used by the College with respect to Consent (or the absence or negation of Consent) consistently, impartially, and in accordance with policy;
- j. How to conduct an investigation and grievance process, including requisite notice, impartial investigation, hearings, appeals, and informal resolution processes;
- k. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- l. Any technology to be used at a Live Hearing;
- m. Issues of relevance of questions and evidence;
- n. Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
- o. How to determine appropriate sanctions in reference to all forms of Sexual Harassment, discrimination, and/or Retaliation allegations.

Specific training is also provided for intake personnel, Advisors, Hearing Decision-Makers, and Appeal Decision-Makers. All team members are required to attend these trainings annually. The materials used to train all members of the team will be posted on the College's website.

Appendix G: Sanctions

A. Student Sanctions

Sanctions that may be imposed upon students or student organizations singly, or in combination, could include but are not limited to:

- i. **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- ii. **Required Mentorship:** A mandate to meet with a mentor and complete a subsequent reflective essay.
- iii. **Required Counseling:** A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- iv. **Probation:** A written reprimand for violation of College policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas on campus, no-contact orders, and/or other measures deemed appropriate.
- v. **Suspension:** Termination of student status for a definite period of time not to exceed two (2) years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at College.
- vi. **Removal from Housing**
- vii. **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events.
- viii. **Withholding Degree:** The College may withhold a student's degree/diploma for a specified period of time and/or deny a student participation in commencement activities if the student is found responsible for an alleged violation.
- ix. **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- x. **Other Actions:** In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate such as community service and other educational projects meant to address the harm to the College community.

In cases where suspension or expulsion is recommended by the Decision-Maker, a summary of Findings and a recommendation will be provided to the Vice President of Student Affairs, or designee, who will decide what kind of disciplinary action is warranted.

B. Employee Sanctions

Responsive actions for an employee who has engaged in sex-based or gender-based discrimination, Sexual Harassment, and/or Retaliation could include, but are not limited to:

- i. Warning – verbal or written
- ii. Performance improvement/management process
- iii. Required counseling
- iv. Required training or education
- v. Mediation
- vi. Probation
- vii. Loss of oversight or supervisory responsibility
- viii. Demotion
- ix. Suspension with pay
- x. Suspension without pay
- xi. Termination
- xii. Other Actions: In addition to, or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

In cases where the Respondent is a College employee and the Investigator determines a policy violation occurred, a summary of Findings will be provided to the Director of Human Resources, or designee, and the Respondent's hiring authority, who will together, in consultation with the decision-maker, determine whether disciplinary action is warranted. If disciplinary action is proposed, Human Resources will assist the hiring authority in initiating the applicable process.

C. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term Remedies or Supportive Measures with respect to the Parties and/or the College community that are intended to stop the discrimination, Sexual Harassment, and/or Retaliation, remedy the effects, and prevent reoccurrence.

These Remedies/actions may include, but are not limited to:

- a. Referral to counseling and/or health services;
- b. Referral to the Employee Assistance Program;
- c. Education to the individual and/or the community;
- d. Permanent alteration of a housing assignment;
- e. Permanent alteration of work arrangements for an employee;
- f. Provision of campus safety escorts;
- g. Climate surveys;
- h. Policy modification and/or training;
- i. Provision of transportation accommodations;

- j. Implementation of long-term contact limitations between the Parties; and/or
- k. Implementation of adjustments to academic deadlines, course schedules, etc.

D. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned Sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-Maker(s), (including the Appeal Decision-Maker).

Failure to abide by the Sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional Sanction(s)/action(s), including suspension, expulsion, and/or dismissal in employment from the College and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Appendix H: Live Hearing – Specific Rules

A. Advisors in Hearings/College-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, live questioning of both Parties is required during the hearing, but must be conducted by the Parties' Advisors. A Party cannot serve as their own Advisor. If a Party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting questioning on that Party's behalf.

If the Party's Advisor will not conduct live questioning, the College will appoint an Advisor who will do so, regardless of the participation or non-participation of the Party during the hearing.

B. Sharing Information, Privacy, and Expectations

The College expects that the Parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations. These restrictions could include but are not limited to removing an Advisor from the investigative process or hearing. If an Advisor is removed, the College will appoint a new Advisor, or the Party may choose a new one.

The Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. If either Party elects to change Advisors, the Party must notify the Title IX Coordinator at least two (2) Working Days prior to the next meeting, hearing, etc. The Title IX Coordinator reserves the right to reschedule a hearing when necessary due to any unforeseen circumstances.

C. Notice of Hearing

No less than ten (10) Working Days prior to the hearing, the Title IX Coordinator, or the Hearing Decision-Maker, will send a notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

1. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result;

2. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other College activities;
3. Any technology that will be used to facilitate the hearing;
4. Information about the option for the Live Hearing to occur with the Parties in separate rooms using technology that enables the Hearing Decision-Maker(s) and Parties to see and hear a Party or Witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) Working Days prior to the hearing;
5. A list of all individuals attending the hearing, along with an invitation to object to any Hearing Decision-Maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) Working Days prior to the hearing;
6. Information on how the hearing will be recorded and how Parties can access the recording after the hearing and a reminder that no person other than the hearing administrator may record the hearing;
7. A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence;
8. Notice that for compelling reasons, the Hearing Decision-Maker may reschedule the hearing;
9. Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present to ask any questions on their behalf. The Party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each Party must have an Advisor present. There are no exceptions;
10. A copy of all the materials provided to the Hearing Decision-Maker(s) about the matter, unless they have been provided already;
11. An invitation to each Party to submit an impact statement to the Title IX Coordinator, if requested by the Hearing Decision-Maker. The Hearing Decision-Maker will review the impact statements prior to determining Sanctions; and
12. An invitation to contact the Title IX Coordinator to arrange any disability-related accommodations (see Appendix J), language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) Working Days prior to the hearing.

Appendix I: Hearing Procedures and Protocols

A. Pre-Hearing Preparation

Any individual scheduled to participate in the hearing must have first been interviewed by the Investigator(s) (or have proffered a written statement or answered written questions), unless all Parties and the Hearing Decision-Maker assent to the Witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the Parties and Hearing Decision-Maker do not assent to the admission of evidence newly offered at the hearing, the Hearing Decision-Maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Parties will be given a list of the names of the Hearing Decision-Maker(s) at least five (5) Working Days in advance of the hearing. All objections to any Hearing Decision-Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible but in no event and no later than three (3) Working Days prior to the hearing. Hearing Decision-Makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Hearing Decision-Maker(s) a list of the names of all Parties, Witnesses, and Advisors at least five (5) Working Days in advance of the hearing. Any Hearing Decision-Maker who believes they cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, Witnesses, and Advisors in advance of the hearing. If a Hearing Decision-Maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) Working Day period preceding the hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Hearing Decision-Maker at the pre-hearing meeting or at the hearing and will be exchanged between each Party by the Hearing Decision-Maker.

Parties and Advisors are not permitted to disseminate any of the evidence subject to inspection and review or to use such evidence for any purpose unrelated to this policy's grievance process, including Retaliation. This includes copying, taking photographs, etc. of the evidence and of the investigative report. If a Party or Advisor violates this provision, they will be subject to appropriate disciplinary action, up to and including dismissal from employment and/or sanctions pursuant to the Student Code of Conduct. If the Advisor is not a member of the College Community and violates this provision, the College may remove the Advisor from this process.

B. Pre-Hearing Meetings

The Hearing Decision-Maker may choose to convene a pre-hearing meeting(s) with the Parties and their Advisors to invite them to submit the questions or topics the Parties wish to ask or discuss at the hearing. This ensures the Hearing Decision-Maker can rule on their relevance in advance to avoid any improper evidentiary introduction into the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors at the hearing from asking for reconsideration based on any new information or testimony offered at the hearing. The Hearing Decision-Maker must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

At each pre-hearing meeting with a Party and their Advisor, the Hearing Decision-Maker will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Hearing Decision-Maker may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing.

The pre-hearing meeting(s) will be recorded.

C. Hearing Procedures

At the hearing, the Hearing Decision-Maker(s) has the authority to hear and make determinations on all allegations of Sexual Harassment and/or Retaliation.

Participants at the hearing will include the Hearing Decision-Maker, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called Witnesses, and anyone providing authorized accommodations or assistive services.

The Hearing Decision-Maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Decision-Maker will allow Witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Decision-Maker(s) and the Parties and will then be excused.

D. Joint Hearings

In hearings involving more than one Respondent, or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

The Title IX Coordinator may permit the investigation and/or hearings pertinent to each

Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

E. Order of the Hearing – Introductions and Explanation of Procedure

The Hearing Decision-Maker will explain the procedures and introduce the participants.

At the hearing, recording, Witness logistics, Party logistics, curation of documents, separation of the Parties, and other administrative elements of the hearing process are managed by a hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various Parties/Witnesses as they wait; flow of Parties/Witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

F. Investigator Presents the Final Investigation Report

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Decision-Maker(s) and the Parties (through their Advisors). The Investigator(s) will be present or otherwise on-call for the duration of the hearing process, but not during deliberations.

Neither the Parties nor the Hearing Decision-Maker(s) may ask the Investigator(s) their opinions on credibility, recommended findings, or determinations; and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Decision-Maker will direct that it be disregarded.

G. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the Parties and Witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Decision-Maker. The Parties/Witnesses will submit to questioning by the Hearing Decision-Maker(s) and then by the Parties' Advisors ("cross-examination").

All questions are subject to a relevance determination by the Hearing Decision-Maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Decision-Maker upon request or agreed to by the Parties and the Hearing Decision-Maker), the proceeding will pause to allow the Hearing Decision-Maker to consider it, and the Hearing Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Decision-Maker will then state their decision on the question for the record and

advise the Party/Witness to whom the question was directed, accordingly. The Hearing Decision-Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Decision-Maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Decision-Maker has final say on all questions and determinations of relevance, subject to any appeal. The Hearing Decision-Maker may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Decision-Maker has ruled on a question. The Hearing Decision-Maker may also rule to remand the case back to the investigator if new evidence is presented at the hearing.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Hearing Decision-Maker at the hearing, the Hearing Decision-Maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Decision-Maker should not permit irrelevant questions that probe for bias.

H. Recording Hearings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Decision-Maker(s), the Parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

I. Deliberation, Decision-making, and Standard of Proof

The Hearing Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the Finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Hearing Decision-Maker, but is there only to facilitate the process procedurally, not to address the substance of the allegations.

If the Hearing Decision-Maker(s) find(s) that a policy violation has occurred, they will then review the statements and any pertinent conduct history provided by the Vice President of Student Affairs or Director of Human Resources and will determine the appropriate sanction(s) in consultation with the Title IX Coordinator, Vice President of Student Affairs, or Director of Human Resources.

The Hearing Decision-Maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report must be submitted to the Title IX Coordinator within ten (10) Working Days of the conclusion of the hearing, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

Appendix J: Disability-Related Accommodations

Students with disabilities may request reasonable accommodations at any point throughout the reporting and grievance process. In order to do so, students must be registered with the Department of Accessibility & Learning Excellence (DALE) and approved by DALE for accommodations related to a disability. If, upon the start of the reporting and grievance process, a student is not registered with DALE for approved accommodations, the student should immediately complete the steps necessary with DALE to initiate services. For more information, see The College's [Student Disability Accommodations Policy](#). The student may request reasonable postponement of the grievance process in order to complete the process to obtain approval for accommodations.

If and/or when a student is registered with DALE for approved accommodations, the student should contact the Title IX Coordinator in writing to request accommodations associated with the grievance process. The Title IX Coordinator will collaborate with DALE to evaluate and arrange for reasonable accommodations. Information received or provided as part of the grievance process prior to the official notification of a request for accommodations is considered valid, as is the integrity of the grievance process up to that point, and will not be considered as grounds for appeal.

Appendix K: Pregnant & Parenting Policy

Pursuant to *Title IX of the Education Amendments of 1972 (Title IX)*, all colleges and universities that receive federal funding are prohibited from discriminating on the basis of sex – including pregnancy and parental status – in educational programs and activities. Title IX also requires colleges and universities to provide specific accommodations for students who are pregnant or parenting, including for pregnancy, childbirth, lactation, false pregnancy, miscarriage, termination of pregnancy or recovery. For more information, see the [“Know Your Rights”](#) guidelines for pregnant and/or parenting students outlined by the U.S. Department of Education’s Office of Civil Rights (OCR).

The College of Idaho and its employees and students will therefore follow the protocols and procedures set forth in this Pregnant & Parenting Policy. This Policy shall also be incorporated herein and as applicable to any student handbook and faculty handbook of The College.

I. NON-DISCRIMINATION

The College will not tolerate discrimination, harassment, misconduct, or retaliation of any form, including towards pregnant and/or parenting students.

Under Title IX, it is illegal for schools to exclude a pregnant student from participating in any part of an educational program, including but not limited to advanced placement and honors classes, extracurricular activities, interscholastic sports, honor societies, and opportunities for student leadership. Title IX also prohibits a school from applying any rule related to a student’s parental, family, or marital status that treats students differently based on their sex. When a qualified student returns to school, for example, the student must be allowed to return to the same academic and extracurricular status as before the medically-supported absence began.

Additionally, The College must allow pregnant and/or parenting students to participate in classes and extracurricular activities and not require students to submit a doctor’s note unless a doctor’s note is required from all students who have a physical or emotional condition requiring treatment by a doctor. The College must not require a doctor’s note from students after hospitalization for childbirth unless it requires a doctor’s note from all students who have been hospitalized for other conditions.

For more information or to report an incident, see The College’s [Non-Discrimination Policy](#) or [Sexual Misconduct Policy](#) and/or contact the Title IX Coordinator (titleix@collegeofidaho.edu / 208-459-5139).

II. ACCOMMODATIONS

With proper documentation, qualified students are entitled to reasonable accommodations for their own medical needs due to pregnancy or childbirth. For purposes of accommodations, “qualified students” are defined as “pregnant students or students who have given birth within

the past six (6) months.”

As required under Title IX, qualified students seeking academic accommodations must complete the steps as outlined in Section VI of The College’s Student Disability Accommodations Policy. Pursuant to this process, The College requires qualified students to submit supporting documentation from a qualified professional² as well as medical certification for school participation. Upon receipt of the requisite documentation, the Department of Accessibility & Learning Excellence (DALE), in collaboration with the Title IX Coordinator, will determine reasonable and appropriate accommodations.

Accommodations may vary by individual due to the condition of pregnancy, medical documentation and the academic program in which the student is enrolled. Accommodations may include, for example, a larger desk, elevator access, permission to make frequent trips to the restroom, extensions on assignments, rescheduling of tests, or alternative methods of instruction (see Section IV below for additional accommodations).

The College must excuse an absence for a qualified student because of pregnancy or childbirth for as long as the student’s physician deems the absences medically necessary. The College may offer the student alternatives to make up missed work such as retaking a semester, taking a leave of absence or allowing the student additional time in a program to continue at the same pace, provided the student will be able to graduate in the amount of time directed by their program of study.

As pregnancy and related conditions are treated as a temporary disability under Title IX, academic accommodations will be approved for a limited period of time based on the information submitted by the treating physician. The student will be required to submit updated documentation, as necessary, if an extension is needed for the use of the accommodations. Extensions may be granted when additional time is required by medical necessity or extraordinary caretaking responsibilities.

For more information about accommodations related to pregnancy or parenting, contact the Title IX Coordinator (titleix@collegeofidaho.edu / 208-459-5139) or DALE (accessibility@collegeofidaho.edu / 208-459-5275).

III. FACULTY RESPONSIBILITIES

Pursuant to Title IX, The College must ensure that the policies and practices of individual faculty members do not discriminate against pregnant or parenting students. As such, faculty who have their own policies about class attendance and make-up work, for example, must ensure

² “Qualified professionals are licensed or otherwise properly credentialed and possess expertise in the disability for which modifications or accommodations are sought.” U.S. Dep’t of Justice, Civil Rights, Division, Disability Rights Section, ADA Requirements: Testing Accommodations, at https://www.ada.gov/regs2014/testing_accommodations.html. Additionally, for purposes of requesting accommodations at the College, the definition of “qualified professional” does not include a College employee (e.g. a staff member of the Health & Wellness Center or DALE), but does include a TimelyCare employee or provider.

that their policies do not conflict with a qualified student's Title IX rights. For example, a faculty member may not refuse to allow a qualified student to submit work after a deadline or make up an exam that was missed because of absences due to pregnancy or childbirth. Additionally, if a faculty member's grading is based in part on class attendance or participation, the student should be allowed to earn the credits missed so that the student can be reinstated to the status they had before the medically-supported absence.

Faculty and staff must be aware of and follow Title IX requirements for pregnant and parenting students through completion of annual training and are encouraged to work with the Title IX Coordinator to discuss any concerns. When responding to students with question regarding accommodations related to pregnancy or parenting, faculty and staff are encouraged to refer students to the Title IX Coordinator (titleix@collegeofidaho.edu / 208-459-5139) or DALE (accessibility@collegeofidaho.edu / 208-459-5275).

IV. POTENTIAL REASONABLE ACCOMMODATIONS FOR PREGNANT & PARENTING STUDENTS

The College provides a variety of accommodations to match the different needs of our students. The below list provides some examples of academic accommodations granted by DALE to support pregnant and parenting students:

1. Providing accommodations to protect the health and safety of the student and/or the pregnancy (such as allowing the student to maintain a safe distance from hazardous substances);
2. Making modifications to the physical environment (such as accessible seating);
3. Considerations for participation, presentations, and sensitive content as relevant to mitigate pregnancy symptoms;
4. Providing mobility support and breaks during class;
5. Extending deadlines and/or allowing the student to make up tests or assignments missed for pregnancy-related absences;
6. Excusing medically-necessary absences, irrespective of classroom attendance requirements set by a faculty member, department, or division);
7. Granting leave per The College's medical leave policy or implementing incomplete grades for classes that will be resumed at a future date; or
8. Allowing breastfeeding mothers who are College students reasonable time and space to pump breast milk in a location that is private, clean, and reasonably accessible. Bathroom stalls do not satisfy this requirement.

Reasonable accommodations may not be appropriate if they fundamentally alter the programs of instruction. Students will need to meet the academic and or technical standards of the programs. Nothing in this Policy requires modification to the fundamental elements of any academic program.